

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
adoption of NEW RULES I through) HEARING ON PROPOSED
XVIII pertaining to the elevator) ADOPTION
services occupational licensing)
program)

TO: All Concerned Persons

1. On December 15, 2005, at 9:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Elevator Licensing Program no later than 5:00 p.m. on December 9, 2005, to advise us of the nature of the accommodation that you need. Please contact George Edwards, Elevator Licensing Program, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdel@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana legislature passed Senate Bill 412, which was signed into law by Governor Schweitzer on April 19, 2005, and enrolled as Chapter 303, Laws of 2005. This new set of laws essentially revamped and significantly expanded Montana's regulation of elevator installation, repair, and operation. Among the provisions enacted by this law are various licensing requirements, which the Department of Labor and Industry is mandated to administer, and the Department was granted rule-writing authority and directed to adopt rules.

Since this area of regulation featured licensing requirements for an industry in which the Department had no previous licensing experience, the Department looked to various sources to determine what was most advisable in terms of licensing qualifications, classifications, and other similar considerations. For example, the Department looked to its other licensing programs such as electrical and plumbing to identify specific types of licenses that might also apply to the elevator industry. The Department also consulted with its apprenticeship and training program as part of its efforts to define training and experience standards. It additionally reviewed administrative regulations adopted in other states with an eye toward using them as models for the structure and content of Montana's administrative rules pertaining to licensing within the elevator industry.

The Department believes it is appropriate for the Department to use this approach in developing the proposed administrative rules because it provided the best way to efficiently identify essential areas of regulatory concern, as well as the more proven and generally acceptable means of addressing them. Thus, the Department believes the following proposed administrative rules are reasonable because they mirror to a great extent administrative rules that are currently effective in Montana and in other states. The proposed rules are necessary because they identify, define, and address the essential elements of elevator licensing and, thereby, implement Chap. 303, L. of 2005, and give practical meaning to the underlying statutes for those who are involved in or affected by Montana's elevator industry. This general statement of reasonable necessity applies to each of the proposed new rules. This general statement may be supplemented by additional reasons where a given rule may need clarification as to the reasonableness of its proposal.

4. The proposed new rules provide as follows:

NEW RULE I GENERAL (1) Any person, firm, company, or other entity wishing to engage in the business of conveyance work that is regulated by the department must be a licensed elevator contractor.

(2) Any person wishing to perform conveyance work that is regulated by the department must be a licensed elevator mechanic employed by a licensed elevator contractor.

(3) Any person wishing to perform elevator inspections services in Montana must be licensed as an inspector by the department to perform elevator inspections and testing.

AUTH: 37-1-101, 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-216, MCA

NEW RULE II DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "Alteration" means a change of original design or operation through modernization, replacement of components or assemblies, or upgrade to existing equipment.

(2) "ANSI" means the American national standard institute.

(3) "ASI" means the American safety institute.

(4) "ASME" means the American society of mechanical engineers.

(5) "Apprentice" means an individual who is working with and receiving training from an elevator mechanic licensed under this chapter and who is registered by an appropriate governmental unit.

(6) "Conveyance" means and is synonymous with "elevator" and includes, but is not limited to:

(a) escalators;

- (b) inclined elevators;
- (c) dumbwaiters;
- (d) platform hoists;
- (e) material lifts;
- (f) moving walks;
- (g) platform or wheelchair lifts; and
- (h) chair lifts.

(7) "Electrical equipment" means any device or group of components that are connected to a source of electrical power. Such devices include, but are not limited to:

- (a) electro-mechanical switches;
- (b) controllers;
- (c) motors;
- (d) car and hall fixtures;
- (e) lighting fixtures; or
- (f) any other component that has exposed electrical parts or connections, either by design or when protective covers are removed.

(8) "Elevator code" means the code contained in [NEW RULE I, proposed in MAR Notice No. 24-301-191, found at page 2021, 2005 Montana Administrative Register, issue no. 20, published on October 27, 2005].

(9) "Equipment testing" means safety tests required by the adopted safety standard performance of properly licensed elevator inspectors.

(10) "Interactive testing and maintenance" means activity which requires human interaction with the technical components of controllers and machinery. Interactive testing includes, but is not limited to:

- (a) car and counterweight safety tests;
- (b) pressure relief tests;
- (c) buffer tests;
- (d) brake tests;
- (e) unintended car movement tests; and
- (f) ascending car overspeed tests.

(11) "Limited elevator contractor" means any person, firm, partnership, company, or entity that is engaged in the business of installing, altering, servicing, replacing or maintaining residential elevators or other conveyances in private residences.

(12) "Limited elevator mechanic" means any person who is engaged in the installation, alteration, servicing, replacing, or maintaining residential elevators or other conveyances in private residences only.

(13) "Lockout" means the placement of a locking device on an energy isolating device, in accordance with an established procedure, to ensure that the energy isolating device and the equipment being controlled by it cannot be operated until the lockout device is removed.

(14) "Maintenance" means the renewal of operating parts, cleaning, lubricating and adjusting existing elevator equipment to ensure proper and safe operation as required by code. The term includes, but is not limited to:

- (a) cleaning and lubricating equipment;

- (b) relamping and repairing car lighting fixtures; and
- (c) regular monitoring of hydraulic oil levels.
- (15) "Operational testing" means, but is not limited to, those activities which require measurement or observation, but which does not require any form of conveyance disassembly. These activities include, but are not limited to:
 - (a) fire service tests;
 - (b) step/skirt index tests;
 - (c) starting and stopping of equipment through normal means; or
 - (d) smoke and heat detectors tests.
- (16) "Repair" means the restoration of an elevator to its original intended design, but does not include changing its operation or intended use.
- (17) "Residential elevator" means a powered or passenger conveyance which is installed in a private residence or multiple unit dwelling as a means of access to private residences, where the access to or control of the elevator is restricted to the residents of the residence or multiple unit dwelling.
- (18) "Responsible elevator mechanic" means a designated individual employed by a licensed elevator contractor who is hired on a fulltime basis to ensure all work performed by the mechanic's employer is code compliant.
- (19) "Tagout" means the temporary placement of a printed notice on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment it controls may not be operated until the printed notice is removed by the person who attached it to the isolating device.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-202, 37-73-203, 37-73-204, 37-73-208, 37-73-212, 37-73-216, MCA

NEW RULE III EXCEPTIONS (1) Elevator mechanic licenses issued by the department are not required for individuals who do not require access to the pit, hoist way, or top of the car to install:

- (a) signal systems;
- (b) fans;
- (c) electric light fixtures;
- (d) illuminated thresholds; and
- (e) feeder wires to the terminals on the elevator main line control.

(2) Elevator mechanic licenses are not required for operational testing and maintenance work that is performed on conveyances when the appropriate lockout and tagout procedures have been performed by the person doing that work. The department must be notified of and must approve the scope of work on a form provided by the department prior to it being performed.

(a) Except where allowed by law, interactive testing and maintenance checks may only be performed by licensed elevator personnel.

(3) Elevator contractor licenses issued by the department are not required for:

(a) an owner or employee of the owner performing only operational testing and maintenance on conveyances; or

(b) a public agency that employs licensed elevator mechanics to perform maintenance.

(4) The construction or modification of hoistway enclosure or machine room enclosure that does not involve alteration, repair or maintenance of an elevator does not require an elevator contractor's license. However, the alteration to these structures must comply with all other applicable sections of the currently adopted building regulations.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

REASON: There is reasonable necessity to identify the types of work for which licensure is not required, in order to clarify the types of elevator work that may lawfully be performed by unlicensed personnel such as owners and their employees. In addition, there is reasonable necessity to identify the circumstances when an employer's private use of employees who are licensees does not rise to the level of when an elevator contractor's license is needed to protect the public health, safety and welfare.

NEW RULE IV APPRENTICE REGISTRATION (1) Elevator mechanic licenses are not required for individuals who provide evidence of apprenticeship registration from:

(a) the department's apprenticeship and training program;

(b) a recognized state apprenticeship registration agency; or

(c) the federal bureau of apprenticeship, United States department of labor.

(2) An apprentice shall work under the direction, control, and supervision of a licensed elevator mechanic at all times while the apprentice is performing or learning to perform elevator mechanic duties and functions.

(3) Licensed elevator contractors shall be responsible for assuring that all apprentices under their general direction and supervision comply with the requirements of this rule.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-202, MCA

NEW RULE V LICENSEE RESPONSIBILITIES (1) Licensed elevator mechanics, limited elevator mechanics, elevator

contractors, limited elevator contractors, or elevator inspectors shall have their licenses available on job sites at all times when employed in these capacities. Elevator mechanic apprentices shall have their registration card, issued by the department, on their persons at all times when so employed. A licensed elevator mechanic, limited elevator mechanic, elevator contractor, limited elevator contractor, elevator inspector or elevator mechanic apprentice who does not have the required proof of licensure or apprenticeship registration while working in one of those capacities is subject to the issuance of a licensing citation in accordance with 37-73-225, MCA.

(2) A licensed limited elevator mechanic shall:

(a) perform work only in the employment of a licensed elevator contractor; and

(b) perform work only on residential elevator construction.

(3) A licensed elevator mechanic shall perform work only in the employment of a licensed elevator contractor.

(4) A licensed elevator contractor shall not allow any person to perform elevator installation or repair work unless the person is:

(a) properly licensed;

(b) in lawful possession of a valid temporary practice permit; or

(c) registered as an apprentice, as provided in [NEW RULE IV].

(5) Elevator contractors are responsible for obtaining any permit required by the state of Montana or a certified local building code enforcement authority relating to elevator equipment and are responsible for ensuring that work performed complies with permitting requirements of the state of Montana.

(6) Elevator contractors, limited elevator contractors, elevator mechanics or limited elevator mechanics may not allow their license to be used by other individuals, firms, corporations or businesses for the purpose of obtaining elevator permits or for performing elevator work.

(7) Elevator contractors may not erect, construct, install or alter an elevator, dumbwaiter, escalator, or other equipment subject to the provisions of Title 50, chapter 60, MCA, unless they have first obtained a permit to do so from the department.

(8) An elevator contractor, limited elevator contractor, elevator mechanic, or limited elevator mechanic may not perform work beyond the scope of the individual's license.

(9) All licensees are responsible for obtaining continuing education training as required by [NEW RULE XV].

(10) Any violation of these licensing responsibilities will be deemed "unprofessional conduct" in addition to conduct described in 37-1-410, MCA and are subject to sanctions as provided by 37-1-406, MCA.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-406, 37-1-410, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-220, MCA

REASON: There is reasonable necessity to adopt this rule to clearly and concisely inform licensees and applicants of the responsibilities, constraints, and sanctions which are attached to each type of licensure within Montana's elevator industry.

NEW RULE VI FEE SCHEDULE (1) Examination fees are set by the testing agency or the department and vary by examination type.

(2) Application for license by examination \$150
(applies to all categories and includes original license fee)

(3) Contractor - original license fee 150

(4) Biennial renewal fee for all categories 100
of licensure

(5) Application for license by endorsement 100
or reciprocity (includes original license fee)

(6) Temporary permit 50

(7) Exam review fee 100

(8) Apprentice registration 25

(9) License renewal 150

(10) Continuing education course curriculum 75
approval

(11) All fees are nonrefundable.

AUTH: 37-1-101, 37-73-102, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, 37-73-102, 37-73-201, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 37-73-221, MCA

REASON: There is reasonable necessity to establish these fees because pursuant to 37-1-134 and 37-73-221, MCA, this regulatory program must be self-sufficient in terms of funding their operational costs. Based upon discussions with industry representatives who currently do business in Montana, the Department believes approximately 90 people will seek one or more forms of elevator licensure as a result of the state's newly enacted licensing requirements. The Department anticipates that the fees established by this rule will thus generate approximately \$13,000.00 in revenue during the first two-year licensing cycle. Accordingly, the Department believes the fees established by this rule are reasonable because they will produce revenue sufficient to operate the elevator services occupational licensing program.

NEW RULE VII DOCUMENTATION OF SUITABLE TRAINING AND EXPERIENCE (1) An applicant for a license must provide documentation that the applicant has suitable training and experience required for the class of license sought by the applicant.

(2) Acceptable proof of suitable training and experience includes, but is not limited to:

(a) completed department-approved forms to document years of experience; or

(b) one or more of the following documents:

(i) affidavits;

(ii) letters from previous employers;

(iii) declarations of experience;

(iv) education credits;

(v) copies of contractor registration information; or

(vi) certificates of training.

(3) Additional documentation may be requested by the department to verify the information provided with the application.

AUTH: 37-73-102, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

REASON: There is reasonable necessity to adopt this rule to clearly inform applicants of the types of documentation the Department will accept, if an applicant is claiming qualification for licensing on the basis of experience and/or training.

NEW RULE VIII ELEVATOR MECHANIC LICENSURE QUALIFICATIONS

(1) An applicant for an elevator mechanic's license shall furnish evidence satisfactory to the department that the applicant has:

(a) passed a written examination or certification approved by the department; or

(b) performed three years verifiable conveyance work which:

(i) is at least 70% construction or maintenance based; and

(ii) does not rely upon residential experience to comprise more than 30% of the total three year requirement.

(2) An applicant for a limited elevator mechanic's license shall furnish evidence satisfactory to the department that the applicant has:

(a) passed a written examination or certification approved by the department; or

(b) three years of verifiable work experience in performing residential conveyance work.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-204, 50-60-203, MCA

REASON: There is reasonable necessity to adopt this rule in order to distinguish between construction, maintenance, and residential work in defining what types of work experience are acceptable as prerequisites for elevator mechanic licensing. Based upon its inquiries among industry representatives and

other elevator regulators, the Department believes that comprehensive experience in elevator construction must be present first before meaningful experience in elevator maintenance can be obtained. Additionally, the Department believes that since nonresidential construction is generally more complicated and demanding in terms of mechanical expertise and ability than is residential elevator work, that at least 70% of the requisite construction or maintenance experience should be of a nonresidential nature. The Department believes the practical experience requirements set forth in this rule are reasonable because it believes that both residential and maintenance elevator work are subsets of nonresidential elevator work and, therefore, that emphasis on nonresidential elevator experience as a licensing requirement (as an alternative to a licensing examination) is reasonable.

NEW RULE IX ELEVATOR INSPECTOR QUALIFICATIONS --
TRANSITION PERIOD (1) Applicants for elevator inspectors licenses shall provide evidence satisfactory to the department that they possess certification as such from one or more of the following entities:

- (a) ANSI;
- (b) ASA; or
- (c) ASME.

(2) Inspectors currently approved to inspect elevators in Montana will have six months from the date this rule becomes effective to become certified in accordance with this rule.

AUTH: 37-73-102, 50-60-203, MCA
IMP: 37-73-102, 37-73-201, 37-73-208, MCA

REASON: There is reasonable necessity for the Department to identify the national standards and qualifications that the Department recognizes for elevator inspection purposes. The Department believes that a six-month transition period is reasonable to allow those individuals currently authorized to inspect elevators in Montana to obtain certification in elevator inspection from any of the three national standards organizations, and balances the implementation of the new laws with the need for currently employed inspectors to continue employment while obtaining certification.

NEW RULE X ELEVATOR MECHANIC APPLICATIONS (1) An applicant shall have one year from the date of department approval to take the examination for which application was approved. If the examination is not taken within that one-year period, the applicant will be required to submit a new application, provide written verification of experience and pay the applicable fees.

(2) All applications shall be approved or disapproved on a case-by-case basis, as the department may deem proper, according to the following criteria:

- (a) complete application submitted;

- (b) fees paid;
- (c) acceptable work experience verified; and
- (d) past disciplinary actions reviewed and considered, if applicable.

(3) Applicants who can, under oath, provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who also possess the requisite experience for licensure may be licensed without examination upon payment of the application fee.

AUTH: 37-1-105, 37-73-102, 50-60-203, MCA

IMP: 37-1-105, 37-73-102, 37-73-201, 37-73-203, 37-73-204, 37-73-221, MCA

NEW RULE XI ELEVATOR CONTRACTOR APPLICATIONS (1) An applicant for an original license or renewal of an elevator contractor license shall submit:

- (a) a completed application;
- (b) the appropriate fee; and
- (c) proof of the following:
 - (i) a general contractor registration to engage in the business of installing, repairing, or altering powered conveyances;
 - (ii) a currently dated certified copy of a liability insurance policy issued to the business name listed on the application which includes the insurance policy number, and which complies with the requirements of 50-60-716, MCA; and
 - (iii) a current certificate of existence or a current certificate of fact, issued by the Montana secretary of state's office.

(2) The department shall issue a limited elevator contractor license to an applicant who:

- (a) submits the documentation required in (1); and
- (b) employs a licensed limited elevator mechanic, named on a form provided by the department, as the elevator mechanic responsible for code compliance on all work performed under that contractor license.

(3) The department shall issue an unlimited elevator contractor license to an applicant who:

- (a) submits the required documentation listed in (1); and

- (b) employs a licensed elevator mechanic, named on a form prescribed by the department, as the elevator mechanic responsible for code compliance on all work performed under that contractor license.

(4) An owner of an unlimited elevator contracting business not licensed as an elevator mechanic shall employ an elevator mechanic to perform all work done under that contractor's license. No holder of an elevator mechanic's license can be named as the responsible elevator mechanic for more than one elevator contractor at any given time.

(5) An owner of a limited elevator contracting business not licensed as a limited elevator mechanic shall employ a limited elevator mechanic to perform all work done under that

contractor's license. No holder of a limited elevator mechanic's license can be named as the responsible elevator mechanic for more than one elevator contractor at any given time.

(6) A responsible elevator mechanic who leaves the employment of a licensed elevator contractor, for whatever reason, must provide written notification to the department of that fact within 10 working days. The licensed elevator contractor must notify the department within 10 working days, on a provided form, of the change of responsible elevator mechanic.

(a) Failure to name another responsible elevator mechanic within 10 working days is cause for disciplinary action, including suspension or revocation of the elevator contractor's license.

(7) A licensed elevator mechanic or limited elevator mechanic may be relieved from further responsibility under any application or permit if the elevator mechanic or limited elevator mechanic has left or been discharged from the employment of an elevator contractor or owner, provided the elevator mechanic or limited elevator mechanic sends a notice in writing to that effect within 10 working days of the last day of employment to the department or the state or local building code enforcement entity, whichever is applicable.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-212, 50-60-203, 50-60-716, MCA

REASON: There is reasonable necessity to adopt this rule in order to clarify various matters pertaining to elevator contractor licensing. Since Montana has two contractor categories, the Department believes that listing the items which must be submitted with completed application forms for each type of license will facilitate more speedy processing of these applications because applicants will know in advance what they are required to submit, rather than having the process delayed while the department requests and receives any unsubmitted information it needs before processing applications.

Sections (2) and (3) require both types of elevator contractors to hire an appropriately licensed elevator mechanic and to designate that person as the individual responsible for code compliance on all work performed under the contractors' licenses. The Department believes this designation requirement is necessary because it provides the department with a definite chain of accountability through which the department can ensure that acceptable levels of public safety are being achieved and maintained throughout the elevator industry in Montana. The Department believes the ability it gains through these sections to trace accountability for safety and code compliance is especially important in situations where contractors are involved in

multiple construction projects and/or maintenance contracts that, typically, require employment of several elevator mechanics to work on one or more of those projects or contracts.

The Department believes (4) and (5) are necessary because they enable persons who personally are not trained or qualified for licensure as elevator mechanics to establish or operate businesses within Montana's elevator industry.

The Department believes (6) and (7) are necessary in order to maintain accurate records of "responsible elevator mechanic" designations for each licensed contractor and affected elevator mechanic in Montana. The Department believes that the requirements set forth in (6) and (7) are necessary in order for the Department (and local building code enforcement authorities) to be made aware in a timely manner of any changes that occur relating to designated individuals.

NEW RULE XII TEMPORARY PRACTICE PERMIT (1) In the event of an emergency or disaster, as defined in 10-3-103, MCA, the department may issue a temporary practice permit for an elevator mechanic or limited elevator mechanic. A temporary practice permit will not be issued until the department:

(a) verifies information provided by a licensed elevator contractor that the contractors' employee, who is the applicant, may be qualified to perform elevator mechanic work without direct supervision; and

(b) determines that the training, education, and/or experience of the applicant seeking temporary practice permits is sufficient to allow that person to perform unsupervised elevator mechanic work without creating a risk to public health, safety, and well-being.

(2) Documentation of the training, education, and/or experience required in (1) for a temporary practice permit must include the following:

(a) a sworn affidavit from a licensed contractor stating an employee/applicant seeking a temporary practice permit has sufficient elevator installation experience to perform specific types of elevator work without supervision by a licensed mechanic;

(b) certified submission of relevant training or coursework successfully completed by the applicant; and

(c) in the case of an apprentice seeking a temporary practice permit, documentation from a state apprenticeship and training bureau or program that the apprentice has completed no less than 70% of the apprentice's required term and is completely current with related instruction. An apprentice's work done under a temporary practice permit must be physically examined on a daily basis by a licensed elevator mechanic for correctness.

(3) The department will verify the information described in (2) as it deems necessary to determine if acceptable

standards of public health, safety, and well-being can be maintained by issuing temporary permits to specific applicants. Indicators used to evaluate acceptable levels of competency include, but are not limited to:

- (a) satisfactory completion of relevant course work;
- (b) amount of relevant on the job training;
- (c) relevant military training and experience;
- (d) relevant on the job training and experience from related trades; and
- (e) trade school certificates.

(4) A temporary practice permit issued pursuant to (1) is valid for 30 days.

(a) Subsequent temporary practice permits will only be issued if the emergency or disaster condition still exists.

(5) In the event the department determines that a shortage of licensed elevator mechanics exists to the extent that, if left uncorrected, it could have a materially adverse impact on public health, safety, and well-being, the department may issue a temporary practice permit for an elevator mechanic or limited elevator mechanic.

(a) A licensed elevator contractor may submit written notification to the department that a shortage of licensed elevator mechanics exists. The elevator contractor must be in good standing with the department and have no active complaints against the licenses of the contractor or the contractor's employees before the contractor is eligible to declare a shortage of elevator mechanics for the contractor's business. Sufficient proof of a bona fide shortage of licensed elevator mechanics must accompany the written notification and must include:

(i) a detailed description of the nature of the claimed shortage which particularly explains why the shortage was unforeseeable;

(ii) a description of all the projects affected by the claimed shortage, including the location of each project; and

(iii) evidence of the need for immediate action by an elevator contractor, especially as it may relate to healthcare issues or accessibility for disabled persons.

(6) Upon consideration and subsequent finding by the department that a contractor's claimed shortage of elevator mechanics is bona fide to the extent that, if left uncorrected, an adverse material impact on public health, safety, and well-being will result, the department will issue temporary practice permits as it deems prudent and appropriate to temporarily remedy the elevator mechanic shortage.

(7) A temporary practice permit issued pursuant to (5) is valid for 30 days and only at the locations noted in (5)(a)(ii).

(a) Subsequent temporary practice permits will be issued only if continued monitoring by the department indicates a bona fide elevator mechanic shortage continues to exist.

(8) For good cause and upon notice, the department may revoke any temporary practice permit as it believes is prudent

and necessary to best serve the interests of ensuring or maintaining public health, safety, and well-being.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-216, 50-60-203, MCA

REASON: There is reasonable necessity to adopt this rule in order to describe the instances and circumstances in which temporary practice permits will be issued, and to notify those who may seek such permits of the requirements that must be satisfied prior to issuance. Additionally, the rule is necessary because it requires the Department to confirm that applicants for temporary practice permits actually have the training, education, and experience they claim before being issued temporary permits and allowed to perform mechanical work on elevators which, if not done properly, would endanger people who use them or other similar conveyances.

The Department believes this rule is reasonable and necessary because it acknowledges the necessary role that elevator mechanics play in maintaining public health, safety, and well-being and that, in a limited number of circumstances, legitimate shortages of fully trained and licensed mechanics may occur in the elevator industry. This rule accommodates contractors who must, despite such shortages, continue to install and service elevators in response to the public's need for and reliance upon such conveyances.

NEW RULE XIII EXAMINATIONS (1) Examinations are held at locations and times considered appropriate by the department. The department will provide reasonable notice to qualified applicants of the date, time, and location of examinations, or of approved vendors that administer the examination.

(2) A person who has failed to pass any examination may, upon the payment of the appropriate fee, take the next scheduled examination. Failure of examination means receiving a test score below 70%. Applicants who fail the test a second time may not take the test again within a two-month period after the last failed exam.

(3) In the event an applicant fails to pass any examination three times, the applicant must wait at least one year from the last failed exam before taking the exam again, after reapplying to the department and paying the required application fee.

(4) An applicant who has failed the elevator mechanic examination two or more times is not prohibited from taking the limited elevator mechanic's licensing examination. Applicants must submit a request in writing to the department requesting the lower level examination at any subsequent time.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-204, MCA

REASON: There is reasonable necessity to adopt a rule that provides for an examination to objectively assess the mechanical, electrical, safety, and other similar competencies that applicants claim to possess relating to the duties and responsibilities they will be expected to assume if they became licensed as elevator mechanics. Testing provides the Department with objectively quantifiable justification to grant or deny licensure to applicants.

The Department believes the proposed approach to subsequent testing is preferable to one which would allow applicants to simply keep taking tests until they pass one as opposed to using unsuccessful testing experiences as a learning tool and improving their knowledge base accordingly. The Department believes the provisions of this rule are reasonable because they are very similar or identical to rules regulating examinations of applicants for licensure into other similar occupations in Montana. This approach to examining applicants has proven workable, understandable, and successful in these other programs and, consequently, the Department believes it reasonable to implement them in its elevator licensure program.

NEW RULE XIV LICENSURE BY RECIPROCITY OR ENDORSEMENT

(1) The department may, on a case-by-case basis, enter into reciprocity agreements with other states or jurisdictions whose requirements are substantially equivalent to or greater than the standards of this state as a basis to issue elevator mechanic or limited elevator mechanic licenses.

(2) Where no reciprocity agreement is applicable, mechanics licensed in other states may apply for licensure by endorsement in Montana. As used in this rule, "licensure by endorsement" means a formal reciprocal licensure agreement has not been signed with another specific state, but the qualifications for licensure in that state are similar to or greater than Montana's qualifications for the same level of licensure.

(3) The department may issue a license by endorsement to an applicant licensed in another state provided that the applicant is seeking a license comparable to the predicate license, and the applicant:

(a) submits a completed application with the required fees;

(b) holds a comparable current, valid license to practice in another state or jurisdiction;

(c) supplies a copy of the laws and rules in effect at the time of application to this state which shows that the standards in the other state are equivalent to or greater than the standards in effect in this state, as determined solely by the department; and

(d) provides official written or electronic verification directly from the other state(s) or jurisdiction(s) that the applicant's license is in good standing.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-204, MCA

REASON: There is reasonable necessity to adopt a rule that allows qualified elevator mechanics from other jurisdictions to become licensed in Montana without requiring them to pass a written examination. As a result of discussions with industry representatives, the Department has become aware that spot shortages of qualified elevator mechanics are not uncommon on an industry-wide basis. With this knowledge in mind, the Department believes it necessary to provide a means by which licensed elevator mechanics from other jurisdictions can become more easily licensed in Montana and then be able to work in this state as necessary during shortages. The Department also believes it necessary to adopt this rule so that Montana's licensed elevator mechanics will not be unnecessarily restricted from working in other states or jurisdictions at times when they are needed or when the demand in Montana for their skills is at a cyclical low.

NEW RULE XV CONTINUING EDUCATION SPONSORS AND COURSES

(1) The department has the authority to approve continuing education sponsors and courses.

(2) Any person or entity may be a continuing education course sponsor. A sponsor may be a for-profit entity or a not-for-profit entity. As examples, a membership association or an organized labor training program may become a continuing education course sponsor.

(a) An entity wanting to be approved as a continuing education course sponsor must submit to the department a completed application.

(b) A sponsor must keep uniform records, for a period of 10 years, of attendance of licensees and these records must be available for inspection by the department at its request. Those records must include:

- (i) course title;
- (ii) course topic;
- (iii) course number;
- (iv) course credit hours;
- (v) date of course; and

(vi) an attendance roster with the individual's license number(s).

(c) Course sponsors are responsible for the security of all attendance records or certificates of completion. Failure to do so constitutes grounds for suspension or revocation of the sponsor's approval.

(3) Continuing education course sponsors seeking course curriculum approval must submit a complete application as prescribed by the department and pay the required fee.

(a) To be approved, the course curriculum must conform to and reflect current standards and requirements governing the operation, construction, installation, alteration, inspection and repair of elevators and other conveyances.

(b) All course approvals expire May 1st of each renewal year.

(c) The department may withdraw its approval of any course if it determines the course material or sponsor is no longer in compliance with the requirements of this rule. If the department withdraws its approval of a course, it will give the sponsor written notification of the withdrawal, specifying the reasons for its decision.

(d) Representatives of the department may attend and monitor approved courses without charge, but without obtaining continuing education course credit.

(4) A course sponsor is responsible for ensuring that instructors are suitably qualified regarding the subject matter the instructor will present.

(5) Course sponsors must provide completion certificates to licensees. Course completion certificates must contain the following:

- (a) course sponsor name;
- (b) course title;
- (c) course number;
- (d) course credit hours; and
- (e) name of person completing the course.

(6) Course sponsors must submit a list of names and license numbers of the attendees to the department as prescribed by the department no later than 30 days after the date of course completion.

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-220, MCA

REASON: The Department believes it reasonable and necessary to adopt proposed NEW RULES XV and XVI to establish requirements for continuing education among Montana's elevator mechanic licensees and the sponsors of such continuing education courses. The department believes these rules are reasonable because they are very comparable with other department continuing education rules that have proven workable and understandable among those affected by them.

NEW RULE XVI CONTINUING EDUCATION CREDITS REQUIRED

(1) In order to renew any class of elevator mechanic license or elevator inspector license, the licensee must have completed at least eight hours of approved continuing education during the two-year license period immediately preceding the renewal.

(2) Licensees must present valid completion certificates to the department upon request by the department.

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-220, MCA

NEW RULE XVII RENEWALS (1) Renewal dates are biennial. The first two-year renewal cycle will commence on April 1, 2008. Renewal is the responsibility of the licensee and

although the department may send reminder notices to the last known address of the licensee, failure to receive such notices does not relieve licensees of their responsibility of renewal.

(2) The renewal form will contain a declaration made under the penalty of perjury of the laws of Montana attesting to having obtained the requisite continuing education.

(3) An audit of continuing education hours will be conducted by the department for each renewal cycle. Failure to obtain the requisite continuing education hours is grounds for license suspension or revocation.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-220, MCA

NEW RULE XVIII LICENSE DISCIPLINE (1) The department will follow all statutes, rules, and policies relating to discipline of licensees under this chapter and 37-1-410, MCA.

(2) In addition to the activities set forth in 37-1-410, MCA, the following activities are also deemed by the department to be unprofessional conduct:

(a) uncorrected violations of the Montana state elevator code as adopted by the department of labor and industry's building codes bureau;

(b) failing to comply with all provisions of state law relating to workers' compensation insurance, unemployment insurance and independent contracting; and

(c) failure to comply with continuing education requirements set forth in [NEW RULE XVI].

(3) Upon findings of unprofessional conduct as defined in (1) and determined in accordance with the Montana Administrative Procedure Act, the department may impose sanctions including, but not limited to, those allowed by or listed in 37-1-406, MCA.

AUTH: 37-73-102, MCA

IMP: 37-1-402, 37-1-403, 37-1-404, 37-1-405, 37-1-406, 37-1-409, 37-1-410, 37-73-102, 37-73-225, 37-73-226, 37-73-227, MCA

REASON: The Department believes that this rule is reasonable and necessary as a means of expressly notifying and informing elevator contractor and mechanic licensees and elevator industry consumers that it intends to fully utilize the quasi-judicial authority it is granted in and by Title 37, chapter 1, part 1, MCA. The department believes the rule is necessary for due process purposes to identify other specific bases for imposing licensing discipline.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Elevator Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdel@mt.gov, and must be received no later than 5:00 p.m., December 22, 2005.

6. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at www.elevator.mt.gov. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Elevator Licensing Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Elevator Licensing Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Elevator Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdel@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Bernie Jacobs, attorney, has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 14, 2005